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March 1, 2000

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee for Consent to Transfer of Control, CC Docket No. 98-184

Dear Ms. Salas:

Enclosed for filing in the above-referenced proceeding are an original and six copies of the Comments of NorthPoint Communications, Inc.

Would you kindly date-stamp the additional copy provided and return the same to the bearer. Thank you for your assistance.

Sincerely,



Charles W. Logan

Enclosures

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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MAR 01 2000

In the Matter of

GTE Corporation, Transferor, and
Bell Atlantic Corporation, Transferee, For
Consent to Transfer of Control

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FEDERAL COMMUNICATIONS COMMISSION
CC Docket No. 98-104
OFFICE OF THE SECRETARY

COMMENTS OF NORTHPOINT COMMUNICATIONS, INC.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
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GTE Corporation, Transferor, and)	CC Docket No. 98-184
Bell Atlantic Corporation, Transferee, For)	
Consent to Transfer of Control)	

COMMENTS OF NORTHPOINT COMMUNICATIONS, INC.

NorthPoint Communications, Inc. ("NorthPoint") submits these comments regarding the merger commitments proposed by GTE Corporation (GTE) and Bell Atlantic Corporation (Bell Atlantic) in support of their proposed merger.¹ NorthPoint focuses its comments on the proposal by Bell Atlantic/GTE to establish separate affiliates to provide advanced services. This proposal is modeled after a similar condition adopted by the FCC last year as part of its approval of the SBC/Ameritech merger.²

¹ See Supplemental Filing of Bell Atlantic and GTE (filed Jan. 27, 2000) (Bell Atlantic/GTE Supplemental Filing), attaching Proposed Conditions for Bell Atlantic/GTE Merger (Proposed Conditions). The Commission sought comment on these proposed merger conditions in a Public Notice released January 31, 2000 (DA 00-165).

² *SBC/Ameritech Order*, CC Docket No. 98-141, FCC 99-279 (released Oct. 8, 1999). NorthPoint's comments only address the terms of the separate advanced services affiliate aspect of the Proposed Conditions. NorthPoint does not at this time address the proposal by Bell Atlantic/GTE to continue to provide inter-LATA services, in apparent violation of 47 U.S.C. § 271, through a term-limited and partially divested inter-LATA affiliate. This aspect of the Proposed Conditions is addressed in comments being filed by ALTS in this proceeding.

I. INTRODUCTION AND SUMMARY

NorthPoint is a national, facilities-based competitive local exchange carrier ("LEC") dedicated to providing affordable, dedicated high-speed Internet access over existing telephone lines using DSL technology. Promoting such advanced services, as well as entry by facilities-based competitive LECs such as NorthPoint, furthers innovation and competition in the telecommunications marketplace, which the Commission has described as "fundamental goals" of the 1996 Act.³

Bell Atlantic/GTE state that the Proposed Conditions will offset any anti-competitive effects resulting from their proposed merger and "promote the widespread deployment of advanced services, spur local competition, and help to ensure that consumers continue to receive high quality and low cost telecommunications services."⁴ Their proposed conditions (at least insofar as the separate advanced services affiliate is concerned) "are patterned closely after those that the Commission adopted in its review of the SBC/Ameritech merger" in CC Docket No. 98-141.⁵

NorthPoint supports the implementation of a separate affiliate for the provision of advanced services as a general matter, and supports the establishment of clear, effective merger conditions to promote competition and the deployment of advanced services. The conditions the

³ *Memorandum Opinion and Order and Notice of Proposed Rulemaking* in CC Docket No. 98-147, FCC 98-188, at ¶ 1 (released Aug. 7, 1998).

⁴ Bell Atlantic/GTE Supplemental Filing at 2.

⁵ *Id.*

Commission approved in conjunction with the SBC/Ameritech merger were a central component of the FCC's finding that that merger served the public interest. Effective, pro-competition conditions should similarly play a central role in the Commission's determination of whether the Bell Atlantic/GTE merger would serve the public interest.

NorthPoint in particular supports a condition that would require Bell Atlantic/GTE to establish a separate affiliate for the delivery of advanced services. This proposal, properly structured and rigorously implemented, would provide a structural mechanism to ensure that competitive providers have effective, nondiscriminatory opportunities to enter new markets, especially the residential market.

In assessing the public interest benefits of the parties' proposed merger, however, the Commission should not merely replicate its public interest findings and the merger conditions it adopted as part of the SBC/Ameritech merger. Rather, it should take into account the lessons that can be learned from the implementation of the SBC/Ameritech merger conditions. It should also analyze the Bell Atlantic/GTE proposed conditions in light of the significant changes in the regulatory environment since the approval of the SBC/Ameritech merger, particularly the Commission's *UNE Remand Order* released in November 1999⁶ and its *Line Sharing Order*

⁶ *In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 99-238 (released Nov. 5, 1999) (*UNE Remand Order*).

released in December 1999.⁷ Bell Atlantic/GTE recognize that aspects of the SBC/Ameritech merger conditions have been superseded by these regulatory developments.⁸

With these considerations in mind, NorthPoint recommends a number of revisions to the Proposed Conditions that will help ensure that the proposed merger does not undermine the Commission's goal of promoting the competitive deployment of advanced services. In particular, as set forth below, the Commission should: (1) prohibit Bell Atlantic/GTE from providing exclusive line sharing to the merged entity's separate affiliates for any period of time; (2) establish a more rigorous timetable for implementing the conditions governing operations support systems (OSS), and ensure that uniform, effective OSS access practices are adopted throughout the Bell Atlantic/GTE territories; (3) adopt effective penalties to ensure compliance with the proposed conditions; and (4) extend the proposed "most-favored nation" provisions so that competing carriers can take advantage of performance measures and standards Bell Atlantic/GTE offer to their separate advanced services affiliates.

II. THE FCC SHOULD NOT PERMIT BELL ATLANTIC/GTE TO PROVIDE EXCLUSIVE, INTERIM LINE SHARING TO THEIR SEPARATE ADVANCED SERVICES AFFILIATES.

Paragraph 4n(1) of the parties' proposed conditions would permit Bell Atlantic/GTE to provide line sharing to their separate advanced services affiliates on an exclusive basis until such

⁷ *In re Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147 & 96-98, FCC 99-355 (released Dec. 9, 1999) (*Line Sharing Order*).

⁸ Bell Atlantic/GTE Supplemental Filing at 18.

time as "the Commission requires Bell Atlantic/GTE to provide line sharing to unaffiliated telecommunications carriers." During this proposed interim line sharing period, Bell Atlantic/GTE would be required to offer discounted surrogate line sharing charges to competitive advanced services providers.⁹

These provisions, however, fail to take into account the fact that, in November 1999, the Commission adopted rules "to require incumbent LECs to provide unbundled access to a new network element, the high frequency portion of the local loop" -- *i.e.*, line sharing.¹⁰ These new rules have gone into effect, and the Commission has "concluded that incumbent LECs should be able to implement OSS and other loop facility modifications [by June 9, 2000] to accommodate requests for access to this new network element."¹¹ The Commission further stated that "there may be interim measures that will allow competitive carriers to begin obtaining some form of access to this unbundled network element even before" this date.¹²

Given this decision, there is no need for Bell Atlantic/GTE separate affiliates to be entitled to line sharing on an exclusive basis during any "interim" period. Implementation of the Commission's new line sharing requirements should be fully and demonstrably completed before any FCC decision approving the parties' merger. Permitting the merged entity to provide interim line sharing to its affiliates on an exclusive basis would, even with the surrogate line sharing

⁹ Proposed Conditions, Section II.

¹⁰ *Line Sharing Order* at ¶ 4.

¹¹ *Id.* at ¶ 161.

¹² *Id.*

discount provisions, create an incentive for Bell Atlantic/GTE to delay implementation of the Commission's line sharing rules. Given the tremendous opportunity for Bell Atlantic and GTE to demonstrate *actual* progress toward opening markets prior to the approval of their proposed merger, permitting Bell Atlantic and GTE to complete the merger with anything less than full compliance with this and other *existing* Commission rules would be completely inappropriate. The parties should instead be given the incentive to expedite the implementation of these rules by denying them the ability to provide line sharing to their separate affiliates on an exclusive basis for any period of time.

III. THE COMISSION SHOULD ESTABLISH A SHORTER, MORE RIGOROUS TIMETABLE FOR THE IMPLEMENTATION OF THE CONDITIONS GOVERNING OSS AND ENSURE THAT UNIFORM, EFFECTIVE OSS PRACTICES APPLY THROUGHOUT THE BELL ATLANTIC/GTE TERRITORIES.

The Commission has recognized the importance of giving competitive LECs nondiscriminatory access to an incumbent LEC's operations support systems (OSS).¹³ Indeed, the Commission has concluded that "the provision of access to OSS functions and the information they contain is integral to the ability of competing carriers to enter the local exchange market."¹⁴ The Bell Atlantic/GTE proposed conditions contain important provisions regarding the deployment of uniform, electronic OSS interfaces and business rules that are critical to fostering competition from competitive advanced services providers. NorthPoint is

¹³ *Memorandum Opinion and Order and Notice of Proposed Rulemaking* in CC Docket No. 98-147, 13 FCC Rcd 24011, at ¶ 157 (1998).

¹⁴ *UNE Remand Order* at ¶ 421.

concerned, however, that the timetable for implementation of these OSS conditions is ill defined and subject to extensive delay.

Paragraph 18 of the proposed conditions states that "[w]ithin 30 days after the Merger Closing Date, Bell Atlantic/GTE will develop a plan to implement uniform, electronic OSS interfaces and business rules" The proposed conditions, however, go on to render the timetable for the actual implementation of these rules and systems completely vague and contingent. Paragraph 19 of the proposed conditions states that the parties, in developing the plan, "may rely" on the results of any of several pending state and FCC proceedings.¹⁵ It further provides that

For those OSS interfaces and business rule changes for which collaborative proceedings have been conducted, these changes will be implemented under the schedules adopted in these proceedings. To the extent that Bell Atlantic/GTE determines that certain OSS interface or business rule issues have not been addressed in these collaborative proceedings, the plan will specify the type of collaborative process that will be used to address these issues. The collaborative process selected will be based on the processes conducted [in various state and FCC proceedings]. Changes to OSS interfaces and business rules proposed in the plan will be implemented within 24 months after the completion of the collaborative process in Bell Atlantic Service Areas and within 24 months after the completion of the collaborative process in the GTE Service Areas.

¹⁵ Proposed Conditions at ¶ 19 (referencing the following proceedings: "Petition of New York Telephone Company for Approval of its Statement of Generally Available Terms and Conditions Pursuant to Section 252 of the Telecommunications Act of 1996 and Draft Filing of Petition for InterLATA Entry Pursuant to Section 271 of the Telecommunications Act of 1996, Case 97-C-0271 proceeding before the New York Public Service Commission ('New York Proceeding'), the Commission Order Instituting Rulemaking, on the Commission's Own Motion into Monitoring Performance of Operating Systems, R.97-10-016 proceeding before the California Public Utilities Commission ('California Proceeding'), Status of Local Telephone Competition, Docket TX98010010, NJBPU, and the proceedings conducted in accordance with MCI WorldCom, Inc. and AT&T Corp. v. Bell Atlantic Corporation, File No. EAD 99-003 ('FCC Proceeding').")

The implementation of the proposed OSS conditions is thus left in large part to Bell Atlantic/GTE's discretion, and their willingness to work with competitive LECs in these collaborative proceedings. The parties apparently seek to retain the right to pick and choose from the standards that may emanate from various pending state and federal collaborative processes. Even worse, these various "processes" have no definite timetable. Bell Atlantic/GTE propose to take up to 24 months to implement a "plan" that has yet to be developed, and it is completely unclear when and if this will ever occur.

The implementation of the SBC/Ameritech conditions governing OSS is instructive. In those conditions, the parties agreed to a detailed plan of record that set forth a specific schedule to develop and deploy enhancements to the preordering and ordering interfaces for OSS used to provide advanced services. The conditions required SBC/Ameritech to participate in a collaborative process with competitive LECs to obtain a written agreement regarding these enhancements. After a series of collaborative sessions over the past four months, however, SBC and the competitive LECs have yet to reach agreement on all relevant issues. Moreover, the parties have disagreed over the proper scope of the collaborative sessions, with the competitive LECs contending that SBC has attempted to limit unduly their scope. The Commission staff has recently extended the deadline for completing the collaborative process in order to give the parties additional time to work out their differences.¹⁶

The Commission can only expect substantially more delay and contention arising out of the implementation of the Bell Atlantic/GTE's proposed OSS conditions, given that they

¹⁶ Letter of Lawrence E. Strickling, Chief, Common Carrier Bureau, to Charles Foster, SBC, Feb. 24, 2000.

contemplate a far less rigorous timetable than the SBC/Ameritech plan of record. To avoid this situation, the Commission should establish a specific, expedited timetable for Bell Atlantic/GTE to implement full and nondiscriminatory OSS access. NorthPoint does not object to developing stringent, uniform performance measures based on the collaborative proceedings Bell Atlantic and GTE may be currently involved in. Indeed, the conditions could require the merged entity to comply with the most stringent set of performance measurements arising out of these proceedings. But this should take place according to a firm timetable established by the merger conditions.

By establishing a more rigorous timetable and enforcement scheme, the Commission would help ensure more rapid and effective implementation of OSS access requirements, and thereby promote competition in the provision of advanced services. In particular, the Proposed Conditions should be revised to establish a specific timetable to implement nondiscriminatory, real-time flow-through ordering for stand-alone and shared-line DSL capable loops. The timetable should also include immediate and full implementation of electronic interfaces for OSS, and robust loop prequalification and qualification functionality, all in compliance with the FCC's *UNE Remand Order* and *Line Sharing Order*.¹⁷

NorthPoint also objects to the Bell Atlantic/GTE proposal not to adopt uniform OSS interfaces between their respective territories.¹⁸ In NorthPoint's view, Bell Atlantic generally has worked cooperatively with competitive LECs to develop OSS solutions consistent with regulatory requirements. In contrast, GTE has simply refused to develop and deploy OSS

¹⁷ See, *supra*, notes 6 and 7.

¹⁸ Bell Atlantic/GTE Supplemental Filing at 21.

capable of providing competitive LECs a meaningful opportunity to compete. GTE has not deployed any systems capable of providing mechanized access to loop qualification information, even though GTE has such capabilities to support its own retail DSL service offering. Nor has GTE announced any plans to replace its cumbersome manual ordering systems for DSL-capable loops. While there is little excuse now for such foot-dragging, there certainly no excuse for a merged Bell Atlantic/GTE company to have such varying approaches to OSS access. At a minimum, the Proposed Conditions should be revised to require Bell Atlantic/GTE to identify and implement the best practices between the two companies as the uniform OSS access standards for the *entire* merged entity. Such best practices may very well arise from the pending NYPSC DSL collaborative process,¹⁹ but in any event should be based on the collaborative process that establishes the most stringent benchmarks.

IV. THE COMMISSION SHOULD ADOPT CLEAR, EFFECTIVE PENALTIES TO ENSURE COMPLIANCE WITH THE PROPOSED CONDITIONS.

Any conditions the Commission adopts as part of approving the parties' merger should be backed up by effective penalties for noncompliance. To achieve this goal, the Commission should reject the last sentence of paragraph 23 of the Proposed Conditions. This sentence, set forth in the section governing uniform and enhanced OSS and advanced services OSS, states that "Bell Atlantic/GTE shall have the right to offset any payments due under this Section if it is required to make payments based on any state requirements or under any agreements with CLECs as a result of the same conduct for which the payment is due under this Section." This provision was not included in the SBC/Ameritech conditions adopted by the Commission.

¹⁹ New York Public Service Commission, "DSL Collaborative," (New York Case 97-C-0271).

Moreover, eliminating this provision would avoid disputes over what constitutes "the same conduct for which the payment is due under this Section," and also would give Bell Atlantic/GTE a greater incentive to comply with the merger conditions the FCC adopts.

The Commission should also set forth the penalty provisions in clear terms. For example, proposed paragraph 21 states that Bell Atlantic/GTE shall pay a penalty of "up to" \$10,000 per business day per state for failure to comply with the proposed conditions regarding the development and deployment of OSS interfaces, business rules, or change management processes. This "up to" language injects unnecessary ambiguity into this provision and should be eliminated.

In addition, the Commission should also make it clear that it will require compliance with the OSS and other advanced services merger conditions as part of its public interest evaluation in future Bell Atlantic/GTE applications to provide in-region interLATA services. Similarly, to the extent Bell Atlantic/GTE fails to comply with these conditions, including the timetable, any in-region interLATA authority it has received should be subject to the enforcement provisions of section 271(d)(6) of the Act, including the suspension of such authority.²⁰ This will ensure full compliance with the parties' merger commitments.

V. THE "MOST FAVORED NATION" PROVISIONS SHOULD APPLY TO PERFORMANCE MEASURES.

Section IX of the proposed conditions tracks the SBC/Ameritech conditions in granting an interconnecting carrier anywhere in Bell Atlantic/GTE's local service territory the right to

²⁰ 47 U.S.C. § 271(d)(6).

adopt terms that the merged company negotiates with another local exchange carrier anywhere outside the company's local service territory following the merger. It creates a similar "most-favored nation" provision regarding in-region agreements the merged company negotiates with a competing carrier.

Unlike the SBC/Ameritech conditions, however, Bell Atlantic/GTE propose that the merged entity not be required to make the same performance measures available to competing carriers under these most-favored nation provisions.²¹ The parties offer no reason for excluding this aspect of the SBC/Ameritech conditions from their proposed merger conditions. The Commission should enable competing carriers to take advantage of the performance measures and standards Bell Atlantic/GTE offer to their separate affiliates. To do otherwise would undermine purpose of the separate advanced services affiliate to help provide a structural mechanism that promotes parity access for analogous OSS functions. This would facilitate the negotiation of interconnection agreements that promote competition. The Commission should therefore extend these most-favored nations provisions to cover performance measures and standards.

²¹ See Paragraph 32 of Proposed Conditions ("... Bell Atlantic/GTE's incumbent LECs shall make available to requesting telecommunications carriers in the Bell Atlantic/GTE service Area, through good faith negotiation, the same interconnection arrangement or UNE on the same terms (exclusive of price *and performance measures*."); Paragraph 33 of Proposed Conditions ("Exclusive of price *and performance measures* ..., qualifying interconnection arrangements or UNEs shall be made available to the same extent and under the same rules that would apply to a request under 47 U.S.C. § 252(i)") (emphasis added).

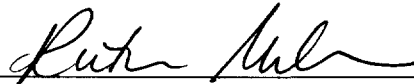
VI. CONCLUSION

For the reasons set forth above, the Commission should clarify and modify the Proposed Conditions consistent with NorthPoint's recommendations and adopt the conditions in connection with the license transfer in the proposed Bell Atlantic/GTE merger.

RESPECTFULLY SUBMITTED,



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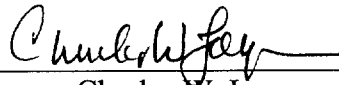


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March 1, 2000

CERTIFICATE OF SERVICE

I, Charles W. Logan, do hereby certify that on this day of March 1, 2000, I caused a copy of the foregoing Comments of NorthPoint Communications, Inc. to be served upon each of the parties listed on the attached Service List by messenger and first-class mail postage prepaid.



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